

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION**

BRENDA MARGESON, *et al.*

Plaintiffs,

v.

WHITE COUNTY, TENNESSEE, *et al.*

Defendants.

)
)
)
)
)
)
)
)
)
)

**No. 2:12-00052
Judge Sharp**

ORDER

In this excessive force case, in which three deputies are alleged to have fired their weapons killing Plaintiffs' decedent, Plaintiffs conclude their response to Defendants' Motion for Summary Judgment with the following statement:

If the question in this case revolves around excessive force, the question then turns to this: Is shooting a person twenty (20) times and then shooting, but missing the body another sixteen (16) times for a total of thirty-six (36) shots, excessive force?


(Docket No. 40 at 18).

This statement, made almost as an aside, is not commented upon in Defendants' reply, or otherwise adequately addressed in the briefing by either party. It may, however, be very significant depending upon the precise factual situation. Compare, Abbott v. Sangamon Ctny., 705 F.3d 706, 733 (76th Cir. 2013) ("To be sure, an officer will not be held liable if the circumstances under which the force was used evolved so rapidly that a reasonable officer would not have had time to recalibrate the reasonable quantum of force" with, Brockington v. Boykins, 637 F.3d 503, 507-08 (4th Cir. 2011) ("it is just common sense that continuing to shoot someone who is already incapacitated is not justified" and based upon facts in the case "thirty-three shots would be

unjustified, as would twenty-nine, or even nineteen [and] six is too many”).

Within twenty (20) days of the date of entry of this Order, the parties shall file further briefing on the accuracy of the statement, the need for (and propriety of) the number of shots fired, and the factual circumstances surrounding exactly what happened once Mr. Margeson got up from the couch and allegedly pointed a rifle at Deputy Capps. Said briefing shall include appropriate citation to the record, and supporting legal authority. Response briefs shall be filed within ten (10) days of the initial briefs.

It is SO ORDERED.



KEVIN H. SHARP
UNITED STATES DISTRICT JUDGE